UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: PB LIFE AND ANNUITY CO., LTD. AND RACHELLE FRISBY AND JOHN JOHNSTON, AS JOINT PROVISIONAL LIQUIDATORS, Debtor.	Lead case: 20-12791-lgb AP: 21-01169-lgb New York, New York June 1, 2022 10:09 a.m. - 10:57 a.m.

AP: 21-01169-LGB
UNIVERSAL LIFE INSURANCE COMPANY
VS. GLOBAL GROWTH HOLDINGS, INC.

MOTION TO RECONSIDER DISMISSAL OF CASE

- A P P E A R A N C E S -

For Universal Life Ins.:	CLINTON E. CAMERON, ESQ. MEGHAN DALTON, ESQ. Clyde & Co LLP 55 West Monroe Street Chicago, Illinois 60603 (312) 635-7000; 312-635-6950 fax
For Morgan Stanley Senior Funding, Inc.:	PETER FRIEDMAN, ESQ. LAUREN WAGNER, ESQ. O'Melveny & Myers LLP 1625 Eye Street, NW Washington, DC 20006 (202) 383-5300; (202) 383-5414 fax
For Lindberg & Global Growth:	JARED T.S. PACE, ESQ. Condon Tobin Sladek Thornton Nerenberg PLLC 8080 Park Lane, Suite 700 Dallas, Texas 75231 (214) 265-3800; (214) 691-6311 fax jpace@ctstlaw.com
For Colorado Bankers Life Ins. Co., Bankers Life Ins. Co., Southland National Ins. Corp., and Southland National Reinsurance Corp.:	NORMAN KINEL, ESQ. Squire Patton Boggs 1211 Avenue of the Americas, 26th Fl New York, New York 10036 (212) 407-0130; (212) 872-9815 fax norman.kinel@squirepb.com

- A P P E A R A N C E S -

For Hutchison Law Group:	LIAM O'BRIEN, ESQ. McCormick & O'Brien, LLP 9 East 40th Street New York, New York 10016 (212) 320-8972 x700 lobrien@mcoblaw.com
For Aspida Fin. Servs. f/k/a Global Bankers Ins. Grp.:	PETER HALEY, ESQ. Nelson Mullins Riley & Scarborough LLP One Financial Center Boston, Massachusetts 02111 (617) 217-4714; (617) 217-4710 fax peterhaley@nelsonmullins.com
For Rachelle Frisby and John Johnston, as JPLs:	CONSTANTINE DEAN POURAKIS, ESQ. ANDREAS D. MILLIARESSIS, ESQ. Stevens & Lee 485 Madison Avenue, 20th Floor New York, New York 10022 (212) 319-8500; (212) 319-8505 fax
Transcriber:	AA EXPRESS TRANSCRIPTS 195 Willoughby Avenue Brooklyn, New York 11205 (888) 456-9716 contact@aaexpresstranscripts.com

(Proceedings recorded by electronic sound recording)

THE COURT: Next case is case number 21-01169, Universal Life Insurance Company vs. Global Growth Holdings, Inc. May I have appearances of counsel, please?

MR. CAMERON: Good morning, Your Honor, this is Clinton Cameron on behalf of Universal Life Insurance Company. And I'm here with my colleague, Meghan Dalton.

MS. WAGNER: Good morning, Your Honor, Lauren Wagner of O'Melveny & Myers on behalf of Morgan Stanley Senior Funding. And I'm here with Peter Friedman

THE COURT: Thank you.

MR. PACE: Good morning, Your Honor, this is Jared Pace at Condon Tobin on behalf of Greg Lindberg, and other defendants identified at ECF 178.

THE COURT: Thank you, Mr. Pace.

MR. KINEL: Good morning, Your Honor, this is Norman Kinel, of Squire Patton Boggs, on behalf of Colorado Bankers Life Insurance Company, Bankers Life Insurance Company, Southland National Insurance Corporation, and Southland National Reinsurance Corporation.

THE COURT: Thank you, Mr. Kinel

MR. HALEY: Good morning, Your Honor, Peter Haley for the defendant, Aspida Financial Services.

THE COURT: Thank you.

MR. O'BRIEN: Good morning, Your Honor, this is Liam O'Brien, McCormick & O'Brien, LLC, on behalf of defendant

Hutchison PLLC.

THE COURT: Thank you. Any additional appearances of counsel?

(No response.)

THE COURT: Okay. Mr. Cameron, I believe this is your motion, so I turn the virtual podium over to you or Ms. Dalton.

MR. CAMERON: I'll be proceeding, Your Honor. Thank you very much. And this is Clinton Cameron for Universal Life Insurance Company, for the record.

As the Court knows, the motion before it today is under Rule 9023. There are essentially two issues presented; first, whether there is in fact subject matter jurisdiction over this case, and second, whether the Court properly entered a final order when it dismissed the case. I'm not going to belabor the point about subject matter jurisdiction, although I will note that the somewhat unusual way that this issue was presented to the Court in the context of a motion to amend, I think makes the standard that counsel for defendants raised somewhat inapplicable or at least different here than in a typical case. This isn't a matter where the Court granted one of the motions and dismissed the case, it properly made its own determination of whether it felt it had subject matter jurisdiction, and that's why we're here today.

So, as the Court knows, the standard for related-to jurisdiction is whether there's a conceivable effect on the

debtor in this case. And in our papers, we explain how this case relates to the prior judgment entered by Judge Liman, which was confirming an arbitration award. It is a somewhat unusual kind of judgment in the sense that it's not simply a money judgment, but what it required, because it was confirming an arbitral award, was that $524 million and change be put into a segregated account in order to pay claims under the reinsurance agreement between the parties. So, it's not simply a matter that our client was entitled to receive a money judgment of $524 million, and then do with it what it wanted, the money was to be used in lieu of the assets that should have been placed in trust with the trustee to act as collateral to pay the reinsurance claims.

So, the key point here is, what the panel was trying to do and what Judge Liman tried to do in his judgment confirming the award, was to provide the requisite collateral. Likewise, in this circumstance where our claims for fraudulent transfer are involved, what we are again trying to do is provide for the requisite collateral to support the payment of the reinsurance claims. No one, and certainly not my client, is arguing that we could double recover, or that there will be no effect on Judge Liman's ruling if we were to succeed and claw back the requisite amount of money that would be necessary to pay the reinsurance claims under the reinsurance agreement. They act together in a way that is intended simply to provide

what my client bargained for. That is, the amount of collateral that's needed to pay the claims.

If we were to succeed in our fraudulent transfer claims here, the effect would be that our claim against the debtor, PBLA, would be reduced. There is little doubt, I would submit, that that reduction in our claim would have a "conceivable" effect on the debtor in the sense that if our claim of $524 million is reduced, there will be funds that would be available to pay other creditors. Under **Parmalat**, **Cuyahoga**, and other cases in this circuit, that suffices to provide for subject matter jurisdiction here as related to the bankruptcy case. So, that's the bottom line with respect to the merits on the subject matter jurisdiction issue.

With respect to the question of whether or not the Court has the power to enter a final order, I admit that we end up in a somewhat labyrinthine discussion about various statutes, which is unfortunate but forced upon us by Congress. In the first instance, this case was based on two grounds of jurisdiction in the district court. First, that there was related-to jurisdiction under § 1334 and diversity jurisdiction under § 1332.

As the Court is aware, there is an order of reference in this district that provides that cases where jurisdiction is predicated in part or in whole on § 1334 are referred automatically to a bankruptcy judge in the bankruptcy court as a

division of the district court. In this case, we could either have ignored that order of reference or done what we did, which is to put a bankruptcy court caption on the case, and then the clerk properly assigned this case to Your Honor.

The assertion that what we should have done is simply file in the district court under 1332 and thereby avoid assignment to the bankruptcy court is both unnecessary and unfair. Parties always plead alternative grounds for jurisdiction when they're in a federal court because lawyers are well aware that federal courts are courts of limited jurisdiction, and so, you plead everything that you have. Now, this case, that's what we did. The result was that this case was assigned to Your Honor. And Your Honor then, quite properly, tried to determine whether or not there was subject matter jurisdiction under § 1334. We just talked about what we think the answer to that question was, but Your Honor came to a different conclusion.

Now, in the event that there isn't subject matter jurisdiction under 1334, the order of reference is not invoked. Neither can it be under § 157. Therefore, the case is improperly referred at this time, to the bankruptcy court and to Your Honor and should simply be returned to the other part of the district court and assigned to an Article III judge. Moreover, the Court doesn't have the authority as a bankruptcy court under 157 or under the rules applicable by the order of

reference to dismiss a case for where jurisdiction is invoked under diversity. That is something that should be referred to an Article III judge to determine whether or not there is proper diversity present. And that's what we would respectfully ask the Court to do should it, for whatever reason, decide that subject matter jurisdiction does not reside under § 1334.

Lastly, I don't believe it's in contention by any other defendant, but they can speak for themselves, the Court would have the ability to enter a final order in this case, but for consent. We briefed for the Court the **Wellness** case (**Wellness Int'l Network, Ltd. v. Sharif**, 575 US), which set forth the applicable standard for consent when it's not explicit. And what it says in sum and substance is, the key standard is whether the litigant or counsel was made aware of the need for consent and the right to refuse it and still voluntarily appeared to try that case. There has been no trial in this case. The standard in **Wellness** was simply not met. There was no consent to a final order being entered by this Court. And respectfully, in the event that there isn't subject matter jurisdiction under § 1334, consent would be impossible because we would have been in the wrong place from the inception.

I don't feel the need to go on and on here, Your Honor. I certainly would like to make sure that I have addressed any questions that you may have, but I think the

argument here is relatively simple and straightforward. And certainly, if there's anything I could answer, I'd be delighted to do so.

THE COURT: Okay. So, Mr. Cameron, I assume what you're asking for in this motion -- as you know, the standard is extremely high for a motion for reconsideration. And the standard that I'm supposed to apply is basically if there's an intervening change of controlling law, which that hasn't happened to my knowledge. Availability of new evidence; there's no evidence that was involved in this. Or the need to correct a clear error of manifest injustice. So, you must be arguing that the reason that I have the ability to alter, amend, and grant your motion is under a clear error of manifest injustice. Is that correct?

MR. CAMERON: I certainly agree that that standard would be applicable here. Whether or not we are bound by that in the context of a Rule 9023 motion under the circumstances here, I'm not entirely sure I think is correct. But obviously what you think is correct is what matters, not what I think, Your Honor.

THE COURT: Well, it really matters what the Second Circuit says I'm supposed to do with this, not what I think either. And the caselaw is pretty clear in the Second Circuit what the standard is that's applied in these circumstances. I guess I'm having trouble understanding how it satisfies that.

The other thing I'm having trouble with, which was raised by some of the other parties is that this argument you're making now, could have been raised back in January and February or whenever the appropriate dates were when we had discussions about the motions to dismiss. And this argument about the 1332 issue, I know this sounds odd, but there are limited things we can do about situations involving the reference. Basically, our court doesn't really have the ability to do that. What happens is, either a party has to file a motion for withdraw of the reference at an appropriate time; and if you are trying to predicate your jurisdiction under 1332, once you commenced it in the bankruptcy court, although this would be odd for a plaintiff to do, in my experience, one could move for withdrawal of the reference at that point. A plaintiff has done that where a case was transferred to me from another jurisdiction. I've seen that. So, that might have been a way for it to go back to the district court if that's what you wanted under diversity jurisdiction, but that wasn't raised.

This issue about my not having ability to enter a final order wasn't raised. Although, it certainly could have been raised in January or February of subsequently. So, I'm having a hard time under the reconsideration standard understanding how I could grant this motion, because either there are issues where I don't think it meets the standard I'm supposed to apply, or it would have required you to have raised

these issues before me because they could have been raised. And filing to raise them previous to this when you could have raised them under the caselaw in the Second Circuit, means that I can't consider that. Again, that's not my decision, that's the Second Circuit's decision, that's the standard. So, I'm not supposed to allow people to, pardon me for saying this, plug holes in their arguments or add a new argument. That's not what a reconsideration motion is for, so I don't see how I can consider that either. But I'd be interested in you telling me how jurisdictionally, I could consider those things in the context of what you're moving under.

MR. CAMERON: Sure. So, with respect to the question of withdrawing the reference at the outset of the case, we did not object to the idea that Your Honor had the ability to administer the case up until trial, which is a common practice. The question is whether or not a final order could be entered. Similar to a circumstance where a United States magistrate judge is assigned to handle pretrial matters, this Court had the ability to handle all the pretrial matters. And we don't deny that the Court had every power and authority to enter what I will call a report and recommendation, what I think another counsel suggested should have been in the form of findings of fact and conclusions of law. But regardless of the nomenclature, we did not object to the idea that the Court could handle all the pretrial matters, and thought it was appropriate

for it to do so given its familiarity with this case. That doesn't require a party to file a motion to withdraw the reference at the outset of the case. It simply requires that party to file, or to make clear, a timely demand that there be a trial before an Article III judge. In this case, we're nowhere trial, and in our complaint, we requested a jury trial. So, it was I think plain that our intent was ultimately for this case to be tried before an Article III judge.

With respect to the procedure issue --

THE COURT: Mr. Cameron, I'm sorry, can I stop you for second? I'm sorry.

MR. CAMERON: Of course.

THE COURT: Just so you know, the bankruptcy court ironically does have the ability to try jury cases. I wouldn't personally say it's a great use of our talents. Except for my fabulous colleague, Judge Jones and some of my other fabulous colleagues who have litigation background and did jury trials, and who's actually having a jury trial in the bankruptcy court in a week, so it does happen. Again, it's not common, but that doesn't always means someone's going to -- I would generally recommend that they do that, I'm not disagreeing with you, but it's not a requirement that they withdraw the reference just because they ask for a jury trial believe it or not. Not in the context of the bankruptcy court if people are prepared to do it.

And there's nothing in your papers that indicated "no

consent" as we went along this process. This is the first time you're raising this. And I hear you about the fact that I could do what you're saying, which is what I could have done if I had jurisdiction, which is administer a case all the way up to trial, but usually the way that happens is someone moves to withdraw the reference and the district court judge decides to tell us that we should continue in this all the way up to trial and then they'll consider it. Especially when it's the plaintiff. But again, it doesn't matter from my perspective because you didn't raise this before me previously.

MR. CAMERON: I don't believe that there was an opportune time to do so, Your Honor. So, what was before Your Honor at the time that we were last before you on this case was a motion to amend the compliant. Now, I totally understand and think that you acted completely properly as a judge in bankruptcy court in making sure that you had subject matter jurisdiction. We were all told over and over again that judges have a responsibility to raise the question sua sponte, which is kind of what you did. I'm not going to say that that's the only thing that happened, obviously there were parties that raised questions about it, but that was not the motion that was before Your Honor at the time.

As I said, I don't object to that in any way. I think it was entirely proper. But that's the first time that we were aware that the Court was going to enter a final order.

Obviously, the motion to amend did not require that. The motions to dismiss, we had resisted and thought they should be denied. In the event that the Court had entered a final order in response to those motions, I would have said what I'm saying now. That is that a final order would not be appropriate. Whether you call it findings of fact, conclusions of law or report and recommendation or again, whatever nomenclature one prefers, that would be fine. That would be understandable, and we would go to an Article III judge, and he or she would decide whether or not to follow the report and recommendation, which is a very common practice that's handled with the United States magistrate judges all the time.

That's what I would have envisioned would have happened here. I think the proper time for us to raise this issue was when we did, when Your Honor indicated that you were entering a final order, and I don't believe that there's been anything that results in consent. I'd like to briefly address, if I may, the questions about internal operating procedures and rules within the district.

I appreciate that there is not an easy obvious place in the rules to find a way now to invoke an Article III judge here and have the case assigned to him or her. But that is not a reason to deprive my client of its fundamental constitutional to an Article III judge as guaranteed in the constitution. I would submit that the Court should ask the clerk to assign this

matter to a district judge and then have he or she sort this out and decide whether or not to follow the Court's view on subject matter jurisdiction. And any case, then that judge may make a determination of whether or not there is or is not diversity, which we are entitled to.

We filed this case in the district court. It was referred properly at the time, in our view, under 157 to a bankruptcy judge. Now, Your Honor has decided that there isn't subject matter jurisdiction. Obviously, I hope you reconsider that. But if that ruling holds true, then the case is still in the district court, it's just that it isn't under Judge Preska's order referring it to Your Honor, which means I should be back in the other part of the district court where I will get an assignment in the first instance to an Article III judge, who's a district judge. I assume that the clerk can figure out how to do that. I realize that there is not a clear administrative remedy here for how we would get that done, but I have some confidence that the clerk would be able to understand what needed to be done and give us a random assignment. In any case, if we have to appeal, we'll get an assignment to a district judge regardless. I'm trying to make sure that I've answered all of your questions.

THE COURT: You have, Mr. Cameron. Okay. Thank you, Mr. Cameron.

MR. CAMERON: Thank you, Your Honor.

THE COURT: All right.

MR. CAMERON: Thanks for your time.

THE COURT: All right. Who would like to be heard next?

MR. PACE: Your Honor, Jared Pace here. May I go?

THE COURT: Yes, you may.

MR. PACE: I'm sorry. This is Jared Pace. May I go, Your Honor?

THE COURT: Yes. I said yes. Sorry if I was unclear, Mr. Pace. Can you hear me?

MR. PACE: Oh, sorry. Yes, I can. I might have missed it. I apologize.

THE COURT: No worries.

MR. PACE: Very briefly, Your Honor, the Court hit on a lot of, quite frankly, my outline for today. the standard for reconsideration, I think, Mr. Cameron initially said is inapplicable. Because of these circumstances, it isn't, it's an exacting one. it's a difficult one to meet, and it hasn't been met here. Not even close. So, virtually everything that Mr. Cameron said on the first prong, the first piece of his argument about subject matter jurisdiction and related-to jurisdiction has already been said or could have been said before the court entered its order. And in particular, with respect to the orders out of judge Liman's court, those are from before this case even began. They're from 2020. All those issues could

have been raised; there's nothing new here. No new evidence; no new law; no intervening change; nothing that would satisfy that standard.

And as the Court look at ULICO's reply filed just the other day, they kind of all but abandoned that argument that the reconsideration standard has actually been met. It hasn't. And that's reason enough to deny it. The real issue I think is whether the Court had the authority to enter a final order. That's really the only dispute here. And on that, I don't think there's much dispute about the standard either. That authority comes from consent, consent of ULICO. And that consent doesn't have to be expressed, it can be implied. I don't think ULICO disagrees with that. I think, they acknowledge that if they impliedly consented, then the Court had the ability to do what it did. And that implied consent, obviously, you've got to look at the circumstances, but if you line that up with other cases, it had to consider whether consent was implied, and there can be no doubt that ULICO certainly consented to this Court entering the order it entered.

For starters, ULICO is the plaintiff. They chose this forum. No one made them file in bankruptcy court. And according to -- I'm sorry?

THE COURT: Someone needs to mute their line because they're making noise. I'm not sure who that is. But everybody else who's not speaking, would you please mute your line?

Sorry, Mr. Pace. Please continue.

MR. PACE: Not at all. So, the issue is consent here, and whether or not there was implied consent. ULICO chose the bankruptcy court. It didn't have to choose the bankruptcy court, and I think ULICO is admitting that. It's saying that it had a diversity theory to get in the district court. To put the district court style on its action instead of the bankruptcy court style. It could have done that according to ULICO. But it didn't do that. And we know why they didn't do that. They told us why.

So, in their omnibus response to all the motions to dismiss, ECF 111, ULICO says, that unled a case arising in the state or federal courts, the rule in adversary proceedings allows for nationwide service of process. That was the only way to get all these defendants into a single case was through the bankruptcy court. They chose bankruptcy court to avail themselves of bankruptcy rules. You don't get to choose bankruptcy court to take advantage of its rules, and then get of bankruptcy court when you don't like the rulings. That's just not equitable, and at the end of the day, this is a court of equity.

But I would argue here that there's even more then complied consent. Where ULICO in that same response, that same omnibus response to the motion to dismiss said that this Court "has subject matter jurisdiction to hear and resolve all of the

claims in this case." That's been ULICO's position, expressed and implied throughout this litigation. There can be no doubt that there's been consent. We cite in our brief on page 7 a string of cases where courts have found consent under far less obvious circumstances than what we have here. One of them, the **ICP Strategic Income Fund**, 730 F. App'x (2d Cir. 2018). One major factor in finding consent was that the defendant who was arguing it hadn't consented removed the case to bankruptcy court. The case didn't start in bankruptcy court, defendant moved it, and the court said you chose this forum by removing it. That's even more true here where ULICO didn't start as a defendant and remove it, ULICO is the plaintiff. They picked this forum. That's got to be sufficient for consent under all the caselaw.

So, under these circumstances, Your Honor, the Court's authority and ability to do what it did can't be doubt because of ULICO's consent that I don't think ULICO really disagrees with. So, for all those reasons, Your Honor, we would ask the Court simply to deny their motion for reconsideration, and also deny converting it to anything else. Don't convert it to a recommendation or findings and conclusions, but deny the motion entirely. And I'll stop there and answer any questions you might have.

THE COURT: I don't have any questions, Mr. Pace. Thank you.

MS. WAGNER: Good morning, Your Honor, Lori Wagner on behalf of Morgan Stanley Senior Funding. I just want to make few points briefly since I think Mr. Pace summed it up pretty well, as well as Your Honor. But for the reasons we've set forth in our brief, opposing the reconsideration motion, it should be denied, they're essentially repeating arguments about subject matter jurisdiction. As Your Honor knows, they've made these arguments at least twice. Once in their opposition for a motion to dismiss and also in support of their motion to amend. And they're simply trying to argue that the Court got it wrong, but this isn't an opportunity to rehash arguments that they already made on a related-to jurisdiction.

And just turning to the point of manifest injustice here for a moment, there can be no argument that there's manifest injustice here because let's say for example the Court ended up entering a recommendation instead of a judgment here, the district court's review of that would be a de nova. And that's the same if they want to appeal the order here, so there's really no argument that there's manifest injustice here.

And just turning quickly to the argument that they never consented to a judgment, Your Honor's is 100 percent right, the argument is not timely, so it's really irrelevant here on a motion for reconsideration. It's also just wrong as a matter of law based on the record in this case, and ULICO's own conduct. Very tellingly, they had no response in their reply

brief to the **In re Ditech** case in which Judge Garrity ruled that consent to an entry of a final judgment can be implied through the conduct of the parties. And here, they consented repeatedly. They never once expressed that they didn't consent to a final judgment. And they had clear notice. They briefed in opposition to our motion to dismiss, they filed the motion to amend, they knew exactly what they were up against in terms of the Court ruling at any time on the motion to dismiss. And in case there were any doubt, the Court gave them explicit notice at the hearing back in January when they requested leave to file a motion to amend. The Court said, you know, I'm going to have to address the subject matter jurisdiction issue. So, they have full notice of that.

And lastly, just taking a step back here, we wanted to note that this whole motion is really mystifying to us. As other parties have already emphasized, they fought very hard throughout the lifetime of this case to argue that the case was properly in this Court. They went as far as to enter into an agreement with the joint provisional liquidators to establish jurisdiction. They argued that the case was intimately tied with the chapter 15 case before Your Honor. So, it seemed peculiar to us that they're now making these arguments after receiving the negative disposition that they did. And again, it's not fully clear to us how the relief would be different in any event since the district court's review would be de novo.

So, we respectfully request that the Court deny the motion. Thank you.

THE COURT: Thank you, Ms. Wagner.

MR. HALEY: Your Honor, Peter Haley for the defendant, Aspida Financial. Aspida Financial will rely on the papers submitted to the Court and the arguments and papers of its co-defendants in this matter. I would just note that Mr. Cameron's argument that in part the dismissal for lack of jurisdiction was, in his words, sua sponte, seems particularly unfair to the partiers and the Court in this matter. This case filed last July. There were numerous motions to dismiss in everyone. Subject matter jurisdiction was raised, as Ms. Wagner noted correctly, at the January status conference. It was raised by the parties, and the Court explicitly informed the plaintiff that it would address that issue in the context of the motion for leave to amend, which it was allowing the third try at a complaint in this matter. It was then briefed under the argument of futility of the amendment given the jurisdiction. So, it seems hardly a case of surprise, as is evident by the argument this morning. It's certainly not a case that meets the standards under Rule 9023. And so Aspida would join with the other defendants in asking that the Court deny the motion for reconsideration.

THE COURT: Okay. Thank you, Mr. Haley. Would anyone else like to be heard in opposition to the motion?

(No response.)

THE COURT: Okay. All right. Mr. Cameron, unless you have anything else you want to add, I'll go ahead and rule on the motion.

MR. CAMERON: That's fine, Your Honor. I'd be happy to address some of the point, but of course, I will do what you would like.

THE COURT: If you'd like to respond, please feel free.

MR. CAMERON: Okay. I'll be very brief. With respect to the question of whether we consented by filing "in this Court," this Court is part of the district court. Section 1334 confers jurisdiction on the district court. There is no independent jurisdiction for a bankruptcy court. So, it simply can't be the case that by invoking § 1334, a party has consented to a final order by a bankruptcy judge, because there would be no way to preserve your right to an Article III judge if that were true.

What we did when we filed in the district court is we abided by Judge Preska's order that said when we invoke § 1334, we should put a bankruptcy court caption on the case. It's just not so that we consented by simply filing our case. Likewise, we invoked § 1332 and it would not be possible for us to consent to have this Court enter a final order in a case where there's only jurisdiction under 1332 because this Court couldn't do it.

So, consent is literally impossible. In any case, Your Honor, I promised to be brief, and I hope I kept that promise. And I thank you for your time.

THE COURT: Okay. Thank you very much, Mr. Cameron. All right. I'm going to deny the motion. I think the reasons that I'm denying this motion are fairly clear, but I'll make it clear for the record. The standard again that this Court has to consider is basically whether or not it meets the standard that is set forth in many Second Circuit cases, including, for example, **Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Trust**, 729 F. 3d 99, 104, which says, a motion for reconsideration should only be granted when the moving party identifies an intervening change of controlling law, the availability of new evidence or the need to correct a clear error or prevent manifest injustice. Courts generally construe this standard very narrowly and apply it strictly against the moving party, so as to avoid repetitive arguments on issues that have been fully considered by the Court. In addition, a reconsideration motion is not an opportunity for a party to plug the gaps of a lost motion with additional arguments or to attempt a second bite at the apple. I note there, I'm citing to the **In re Centric Brands, Inc.**, 2022 WL 1132046 at *2.

These are the standards that I'm required to apply when I'm looking at a 9023 motion. I will say that I don't find that the standards are met because, as I noted on the record,

there's no intervening change of controlling law; there's no availability of new evidence; and there's no need to correct a clear error of manifest injustice. Obviously, I don't find that my original decision was in error and therefore I don't feel that there's a clear error of manifest injustice here.

I note that other parties have mentioned this already procedurally, but I'm going to make clear for the appellate court, who's probably going to be getting this, and for the record that the process here, as was noted by Mr. Haley in his argument, is that this case was filed in July. We had a motion to dismiss. Every party, just about, who filed motions to dismiss raised the jurisdictional issue with me. As noted in Mr. Haley's argument and in the papers, in January, we had a status conference on this subject, where there was a request to file another motion for leave to amend and there were arguments held where issues were raised about the subject matter jurisdiction issue before me. I agreed to allow a hearing on a motion for leave to amend and allow the plaintiff to file another motion for leave to amend, and that I would consider that. But I also did make very clear on the record, as many of the parties in opposition to the motion have noted, that I was going to consider the issue that had come up in all the briefing in the motions to dismiss in both the initial pleadings and then the replies that were filed by parties on the subject matter jurisdiction. And in the context of the motion for leave to

amend, I would consider that issue, and in fact, people did brief that matter in connection with the motion for leave to amend in the context of both futility of an amendment, but also, just the Court's general jurisdiction. It was not and could not have possibly been a surprise to any parties that I was going to actually consider that. And as noted even by Mr. Cameron, himself, counsel for ULICO, the appropriate thing for me to do is to consider my jurisdiction when it's raised to me. And it was raised to me, quite clearly, in not only one set of multiple pleadings and responses, but in another set. And the fact that I was going to hear and consider that at the hearing when I did was not a surprise to anybody.

I did consider it. I heard all the argument. I spent a great deal of time looking at all the cases on related-to jurisdiction, especially in this context, the chapter 15, including all the cases that were cited in connection with counsel for ULICO's papers, and I determined that I did not believe that I have related-to jurisdiction here. And that was my ruling. And my ruling is standing; I'm not granting reconsideration. I note, additionally, that the arguments that have been made here with respect to a stern and my not having the ability to enter final decisions in connection with this matter was not raised before me by the plaintiff either in the context of the motion to dismiss or the motions to leave, or the futility of the amendment, nor in the context of filing a motion

for withdrawal of the reference, which could have been done at any time, and when there was a risk that I would possibility determine the jurisdictional issue, it certainly, could have been raised at that point and it wasn't. So, I'm just not going to consider it because I'm not allowed to consider things that could have been raised before me and this definitely could have been raised before me in numerous contexts if it was intended to be raised.

And I'm not going to spend any time discussing implied consent or otherwise, except to note that, of course, there is the concept of implied consent. But because this is an argument that could have been raised before me previously in the context of several motions or in a motion to withdraw the reference, previously, and it wasn't, I'm not going to rule on that today. I'm not going to consider it because I'm not allowed to consider it under the standards for a motion for reconsideration.

So, I will enter an order for the records that I've stated on the record, denying the motion. And Mr. Cameron, you obviously are free to appeal this to the district court.

MR. CAMERON: Thank you, Your Honor, we appreciate your time.

THE COURT: Okay. I did have one other thing I wanted to mention because I believe Mr. Pourakis is still on this case. I'm sorry, I'm checking. Yes, he is and other parties. And Mr. Pace. In connection with discovery issues and motions that I

received for 2004 exams and the hearing that we had for five hours a couple of weeks ago, I have been waiting for a few orders with respect to those motions, and I haven't received them because it doesn't seem that the parties have been able to reach an agreement on it. So, I'm just instructing Mr. Pourakis that I expect him to submit orders to me. If they're resolved, great; and if they're not resolved, fine. By no later than the 6th of June which is next Monday. And if anybody has counterorders or other things, they can submit them simultaneously. And then I'm going to consider the orders and I'm going to enter something by the end of next week.

MR. POURAKIS: Your Honor, Mr. Pourakis for the JPLs. We had had correspondence this morning with Mr. Pace. We're going to be submitting those proposed orders to your chambers tomorrow, and we gave him an opportunity to respond, and we expect responses. If no responses are received by noon tomorrow, we'll be submitting the orders tomorrow. And he'll be free to, as you said, submit counterproposals.

THE COURT: Okay. And any counterproposals have to be submitted by Monday.

MR. PACE: Thank you, Your Honor. Jared Pace here. Just to be clear, we've actually exchanged drafts, so it's not a nonresponse from our side.

THE COURT: No, I understand, Mr. Pace. I didn't mean to imply that. I know the parties have been exchanging drafts

and trying to reach an agreement. But as you know, with most things in this case, you all don't ever seem to be able to reach an agreement. And I don't mean that critically, I just mean that practically. So, enough time has gone by since the hearing that we had, which I believe was the 12th of May. I could be wrong about that, but I think that's right. So, I feel that in terms of orders three weeks of going back and forth is enough and therefore, I feel that I should get drafts of them and then I'll wait to get counterproposals if you all haven't reached an agreement on something. And then, I'm going to just deal with that and rule. You all know that I've done that before. It rarely ends up that I give you either one of your orders, as you probably know, both of you, from looking at them. Because sometimes I find that one party is more compelling on one point than others, and then sometimes I find, frankly, you've missed things, then I put things in that I think are appropriate. So, I'm happy to do that and review the orders. My clerks and I are happy to do that to move this along because there are reasons that these 2004 orders were necessary. The reasons that cause me to rule in favor of these motions when we had the hearings after we had considerable amount of paring back on some of these motions is because ultimately, this discovery is necessary, and there are deadlines coming up, and there is a valid reason for the foreign debtors to have this discovery. And so, the longer that we spend time not having these orders

entered, the time is ticking by for the foreign debtors to be able to take the discovery. And that's not fair, given that I granted the motion, again, with much paring back in parts, on May 12th. So, we just need to all move along here. And the only way that we can move forward and move along is if I get orders. And I don't mean that critically of you or Mr. Pourakis. I'm sure you have been, as well as other people, possibly, exchanging drafts, but we now have to move along. So, Mr. Pourakis will submit his orders to us and then you, or anybody else, can submit any counterorders to me on Monday. And then, after that, we're going to take a look at them and we're going to get orders entered because we need to move this along.

MR. PACE: Understood, Your Honor. Thank you.

MR. POURAKIS: Yes, Your Honor. Thank you.

THE COURT: Okay. Great. Is there anything else that we need to discuss, Mr. Pourakis, with respect to this case or the chapter 15 case?

MR. POURAKIS: The only other item, Your Honor, is that we should be reaching consensus on an order memorializing what you found concerning the Hutchinson turnover. We've been in contact with Mr. Carter, representative of Hutchinson. So, we should be submitting that as well to you by the end of this week.

THE COURT: Okay. That's fine, Mr. Pourakis.

MR. POURAKIS: Okay.

THE COURT: No problem.

MR. POURAKIS: Thank you.

THE COURT: All right. If there's nothing else for today, then I'll wish you all a good day. We are adjourned. You all are excused. Thank you. Have a nice day.

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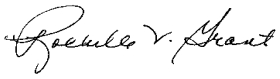
CERTIFICATION

I, Rochelle V. Grant, approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the matters of 21-01169, held on 6/1/22.



June 2, 2022